

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 FERNANDO HERNANDEZ, KENNETH CHOW,  
5 BRYANT WHITE, DAVID WILLIAMS, MARQUIS ACKLIN,  
6 CECILIA JACKSON, TERESA JACKSON,  
7 MICHAEL LATTIMORE, and JUANY GUZMAN, Each  
8 Individually, And On Behalf Of All Other  
9 Persons Similarly Situated,

10 Plaintiffs,

11 -against- Index No:  
12 12 CV 4339 (ALC) (JLC)

13

14 THE FRESH DIET, INC., LATE NIGHT EXPRESS  
15 COURIER SERVICES, INC. (FL), FRESH DIET EXPRESS  
16 CORP. (NY), THE FRESH DIET - NY INC. (NY),  
17 FRESH DIET GRAB & GO, INC. (FL) a/k/a  
18 YS CATERING HOLDINGS, INC. (FL) d/b/a  
19 YS CATERING, INC. (FL), FRESH DIET EXPRESS  
20 CORP. (FL), SYED HUSSAIN, Individually,  
21 JUDAH SCHLOSS, Individually, and ZAIMI DUCHMAN,  
22 Individually,

23 Defendants.

24 -----x

25 EXAMINATION BEFORE TRIAL of the  
Plaintiff, FERNANDO HERNANDEZ, taken by the  
Defendant, pursuant to Stipulation, held at the  
offices of Kaufman, Dolowich, Voluck & Gonzo  
LLP, 100 William Street, Suite 215, New York,  
New York 10038, on September 17, 2013, at 10:15  
a.m., before a Notary Public of the State of  
New York.

\*\*\*\*\*

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[Page 2]

1  
2 APPEARANCES:  
3 THE HARMAN FIRM, PC  
4 Attorney for Plaintiffs  
5 200 West 57th Street, Suite 900  
6 New York, New York 10019  
7  
8 BY: BRIAN M. MOSS, ESQ.  
9  
10 KAUFMAN, DOLOWICH, VOLUCK & GONZO LLP  
11 Attorneys for Defendants  
12 135 Crossways Park Dr., Suite 201  
13 Woodbury, New York 11797  
14  
15 BY: JEFFERY A. MEYER, ESQ.  
16  
17 FILE #: 055611-0002  
18  
19 ALSO PRESENT:  
20  
21 BEATRICE VUDUARTE, Spanish Interpreter,  
22 Languages R Us  
23  
24  
25

[Page 4]

1  
2 BEATRICE VUDUARTE, called as  
3 the interpreter in this matter, was duly sworn  
4 by a Notary Public of the State of New York to  
5 accurately and faithfully translate the  
6 questions propounded to the witness from  
7 English into Spanish and the answers given by  
8 the witness from Spanish into English.  
9 -oOo-  
10 FERNANDO HERNANDEZ, the  
11 witness herein, having been first duly sworn by  
12 a Notary Public of the State of New York, was  
13 examined and testified through the interpreter  
14 as follows:  
15 EXAMINATION BY  
16 MR. MEYER:  
17 (Whereupon, Notebook Bates  
18 stamped FD000103 was marked as  
19 Defendant's Exhibit 1, for  
20 identification, as of this date.)  
21 (Whereupon, Notebook Bates  
22 stamped FD000104 was marked as  
23 Defendant's Exhibit 2, for  
24 identification, as of this date.)  
25 (Whereupon, Verification was

[Page 3]

1  
2 STIPULATIONS  
3 IT IS HEREBY STIPULATED AND AGREED by  
4 and between the attorneys for the respective  
5 parties herein, that filing, sealing and  
6 certification be and the same are hereby  
7 waived.  
8 IT IS FURTHER STIPULATED AND AGREED  
9 that all objections, except as to the form of  
10 the question shall be reserved to the time of  
11 the trial.  
12 IT IS FURTHER STIPULATED AND AGREED  
13 that the within deposition may be signed and  
14 sworn to before any officer authorized to  
15 administer an oath, with the same force and  
16 effect as if signed and sworn to before the  
17 Court.  
18  
19  
20  
21  
22  
23  
24  
25

[Page 5]

1 F. Hernandez  
2 marked as Defendant's Exhibit 3, for  
3 identification, as of this date.)  
4 (Whereupon, Plaintiff's  
5 interrogatory responses were marked as  
6 Defendant's Exhibit 4, for  
7 identification, as of this date.)  
8 (Whereupon, Plaintiff's  
9 responses to Defendant's document  
10 requests were marked as Defendant's  
11 Exhibit 5, for identification, as of  
12 this date.)  
13 (Whereupon, Retaliation  
14 affidavit was marked as Defendant's  
15 Exhibit 6, for identification, as of  
16 this date.)  
17 (Whereupon, Collective affidavit  
18 was marked as Defendant's Exhibit 7, for  
19 identification, as of this date.)  
20 (Whereupon, Class action  
21 affidavit was marked as Defendant's  
22 Exhibit 8, for identification, as of  
23 this date.)  
24 (Whereupon, Manifests  
25 FD001609-1700 were marked as Defendant's

[2] (Pages 2 to 5)

[Page 6]

1 F. Hernandez  
 2 Exhibit 9, for identification, as of  
 3 this date.)  
 4 (Whereupon, 2010 1099 form was  
 5 marked as Defendant's Exhibit 10, for  
 6 identification, as of this date.)  
 7 (Whereupon, 2011 1099 form was  
 8 marked as Defendant's Exhibit 11, for  
 9 identification, as of this date.)  
 10 (Whereupon, 2012 1099 form was  
 11 marked as Defendant's Exhibit 12, for  
 12 identification, as of this date.)  
 13 Q. State your name for the record, please.  
 14 A. Fernando Hernandez.  
 15 Q. State your address for the record,  
 16 please.  
 17 A. 225 South 3rd Street, Apartment 4,  
 18 Brooklyn, New York 11211.  
 19 Q. Good afternoon.  
 20 A. Good afternoon.  
 21 Q. Mr. Hernandez, my name's Jeff Meyer.  
 22 We've actually, I think, met before at a prior  
 23 hearing on this case when you were under oath,  
 24 and I asked you some questions before  
 25 Judge Carter, I believe.

[Page 7]

1 F. Hernandez  
 2 A. Yes.  
 3 Q. I'm going to be asking you some more  
 4 questions about the lawsuit that you have  
 5 commenced against The Fresh Diet and Late Night  
 6 Express.  
 7 Do you have a question?  
 8 A. No.  
 9 Q. Before we get started, I just want to  
 10 set a few ground rules.  
 11 If there's a question I ask you that you  
 12 don't understand or you don't understand the  
 13 format in which I've asked it, just say so, and  
 14 I will repeat or rephrase the question.  
 15 A. Okay.  
 16 Q. If you need to take a break at any time,  
 17 just let me know. This is not an endurance  
 18 test. This is not a marathon. The one thing I  
 19 do ask is that if I asked you a question that  
 20 you answer it before we take that break.  
 21 A. Okay.  
 22 Q. Before we get started, are there any  
 23 questions you have?  
 24 A. No.  
 25 MR. MOSS: I don't have any

[Page 8]

1 F. Hernandez  
 2 questions, no.  
 3 MR. MEYER: Fair enough.  
 4 Q. Mr. Hernandez, is there anything that  
 5 would inhibit your ability today to tell the  
 6 truth at this deposition, whether it be any  
 7 prescription drugs or drugs you've taken or  
 8 alcohol or anything?  
 9 A. No, none.  
 10 Q. Very good.  
 11 Are you currently employed?  
 12 A. No.  
 13 Q. Who was your last employer?  
 14 A. Fresh Diet.  
 15 Q. When was your last day working with  
 16 Fresh Diet?  
 17 A. It seems to me it was approximately  
 18 around July 4th or 5th, I believe.  
 19 Q. Of what year?  
 20 A. 2012.  
 21 Q. Since early July of 2012, have you  
 22 collected unemployment insurance?  
 23 A. Yes.  
 24 Q. When did you start collecting  
 25 unemployment insurance?

[Page 9]

1 F. Hernandez  
 2 A. It seems to me I started to collect  
 3 around July. Hold on. Wait a minute. Around  
 4 June or July.  
 5 Q. It was soon after you stopped working  
 6 with Fresh Diet?  
 7 A. Of course. I submitted my application.  
 8 Q. Are you still collecting unemployment  
 9 insurance?  
 10 A. Yes.  
 11 Q. Have you collected unemployment  
 12 insurance --  
 13 A. Wait. It was a mistake. I started in  
 14 July, and it -- it started receiving in  
 15 February. I lost my job in February. No, in  
 16 July. I started to collect in February because  
 17 they gave me retroactive.  
 18 Q. You're saying your last day of work was  
 19 in early July 2012?  
 20 A. Uh-huh.  
 21 Q. You're saying you've been collecting  
 22 unemployment insurance since February 2012  
 23 retroactively?  
 24 A. Of course, since they approve it in  
 25 July.

[3] (Pages 6 to 9)

[Page 10]

1 F. Hernandez  
 2 Q. From February to July of 2012, you were  
 3 working with The Fresh Diet, and you were also  
 4 collecting unemployment benefits at the same  
 5 time?  
 6 A. At that time, I wasn't working for Fresh  
 7 Diet.  
 8 Q. Who were you working for?  
 9 A. I wasn't working at that time.  
 10 Q. You said your last date that you worked  
 11 with The Fresh Diet was July 4th or 5th of  
 12 2012.  
 13 A. Yeah, but they approved the unemployment  
 14 -- around February 2013 is when they approve  
 15 it.  
 16 Q. 2013 not 2012?  
 17 A. 2013.  
 18 Q. Thank you.  
 19 From July of 2012 until February of  
 20 2013, what income did you have?  
 21 A. No income.  
 22 Q. Were you working anywhere off-the-books?  
 23 A. No.  
 24 Q. Once you started collecting unemployment  
 25 insurance, how much were you receiving? Would

[Page 11]

1 F. Hernandez  
 2 it be per week?  
 3 A. Approximately, 395.  
 4 Q. You're still collecting those benefits?  
 5 A. Yes. They gave me an extension.  
 6 Q. How long does that extension run?  
 7 A. I don't know.  
 8 Q. At no point since your relationship with  
 9 The Fresh Diet ended have you worked anywhere  
 10 else?  
 11 THE INTERPRETER: What?  
 12 Q. Since your relationship with The Fresh  
 13 Diet ended in July of 2012, you have not worked  
 14 anywhere else; is that correct?  
 15 MR. MOSS: Objection to the  
 16 form.  
 17 You can answer.  
 18 A. No.  
 19 Q. Nowhere?  
 20 A. No.  
 21 Q. Have you had any other earnings outside  
 22 of employment with another company?  
 23 MR. MOSS: Objection.  
 24 He's answered that, but you can  
 25 answer.

[Page 12]

1 F. Hernandez  
 2 MR. MEYER: I asked if he was  
 3 working anywhere else. He may have  
 4 additional income from another source.  
 5 A. No. I already said it previously. I  
 6 had no income, no other income.  
 7 Q. When did you start working for The Fresh  
 8 Diet?  
 9 A. The middle of April 2010.  
 10 Q. When you received your check, did you  
 11 receive it weekly or biweekly, your pay stub?  
 12 A. By week.  
 13 Q. What company's name was on that  
 14 paycheck?  
 15 A. Late Night Courier.  
 16 Q. Wouldn't then Late Night Express or Late  
 17 Night Express Courier be your employer if they  
 18 were on your paycheck?  
 19 MR. MOSS: Objection to the  
 20 form.  
 21 You can answer.  
 22 A. Can you repeat, it please?  
 23 Q. You stated that Late Night Express was  
 24 on the pay stubs you received, right, your  
 25 earning statement?

[Page 13]

1 F. Hernandez  
 2 A. Yes.  
 3 Q. That was the entity that paid you,  
 4 correct?  
 5 A. The one who made the check was Fresh  
 6 Diet.  
 7 Q. But the check says Late Night Express  
 8 Courier, correct?  
 9 A. Yes, the check, but I represented Fresh  
 10 Diet.  
 11 Q. Did you ever receive an earnings  
 12 statement or a pay stub from The Fresh Diet?  
 13 A. No.  
 14 Q. What was your title?  
 15 What was your job title with, we'll call  
 16 it the defendants here, Late Night  
 17 Express/Fresh Diet?  
 18 I don't want to get into a back and  
 19 forth from now on what entity it is.  
 20 What was your job when you worked with  
 21 these entities?  
 22 A. A driver for the company.  
 23 Q. Did you use your own vehicle?  
 24 A. Yes.  
 25 Q. Explain to me just what your job was.

[4] (Pages 10 to 13)

[Page 14]

1 F. Hernandez  
 2 What did you do as a driver?  
 3 A. What I had to do as a driver was to  
 4 pickup the food and bring it to the client for  
 5 Fresh Diet.  
 6 Q. What time of the day would you report to  
 7 the building to pickup these meals?  
 8 A. At that time, I don't -- sometimes  
 9 before because if they needed me to go  
 10 somewhere else.  
 11 Q. Starting in April of 2010, let's start  
 12 over here, you started working for, we'll just  
 13 call it the company?  
 14 A. Yes.  
 15 Q. What time would you show up to work?  
 16 A. At 4:00 p.m. or before if they needed me  
 17 because I started as a substitute.  
 18 Q. As a substitute driver?  
 19 A. Yes.  
 20 Q. What does that mean?  
 21 What is a substitute driver?  
 22 A. That's the opportunity they gave me to  
 23 start. There was a missing driver, and I would  
 24 cover the route.  
 25 Q. If somebody didn't show up that day or

[Page 15]

1 F. Hernandez  
 2 somebody didn't report to work, you would take  
 3 that route?  
 4 A. Whatever they give me.  
 5 Q. Do you know what time the meals would  
 6 normally be ready and packaged, ready to leave  
 7 the building?  
 8 A. Most of the times, the meals were not  
 9 ready. Sometimes, they weren't ready until  
 10 7:00, 8:00 at night. Usually, the meal that  
 11 they prepare first was the one that had to be  
 12 taken outside of the state.  
 13 Q. When you say "outside of the state,"  
 14 where would they be going to?  
 15 A. Pennsylvania, Baltimore, Boston,  
 16 Philadelphia, New Jersey.  
 17 Q. Did you ever make deliveries to  
 18 Pennsylvania?  
 19 A. Yes.  
 20 Q. How often?  
 21 A. That's how I started. That's how I  
 22 started, couriering for a couple of times.  
 23 Q. How many times?  
 24 A. Seems to me it was like two times.  
 25 Q. The whole duration of your employment

[Page 16]

1 F. Hernandez  
 2 with the companies, you went to Pennsylvania  
 3 twice, made deliveries in Pennsylvania twice?  
 4 A. Yes.  
 5 Q. Did you ever make deliveries to Boston?  
 6 A. No, not in Boston.  
 7 Q. Did you ever make deliveries to  
 8 Baltimore?  
 9 A. Yes.  
 10 Q. How many times?  
 11 A. Two times.  
 12 Q. In the entirety of your employment, of  
 13 your relationship, you made two deliveries?  
 14 A. I made two deliveries to Boston because  
 15 the route was to get to Philadelphia, Boston.  
 16 Q. You went to Philadelphia and Boston in  
 17 the same day?  
 18 A. No, not Boston (English). On the same  
 19 day, we had to do the deliveries to bring it to  
 20 those states. I didn't mention Boston  
 21 (Spanish).  
 22 Q. When you went to Baltimore, you'd go to  
 23 Philly on the same trip? That would be the  
 24 same loop?  
 25 A. Yes.

[Page 17]

1 F. Hernandez  
 2 Q. When you said Pennsylvania, did that  
 3 mean this Philadelphia trip, or was there a  
 4 separate Pennsylvania trip?  
 5 A. Philadelphia and Baltimore.  
 6 Q. You said you went to Pennsylvania twice  
 7 and Philadelphia twice.  
 8 Those are the two same trips?  
 9 A. On the same day.  
 10 Q. Twice you made a loop?  
 11 You went to Baltimore, Philly and back  
 12 around or Philly, Baltimore and back around?  
 13 You did that twice, correct?  
 14 A. No. The route started in Philadelphia,  
 15 continued to Philadelphia, and then we come  
 16 back to return the bags and everything.  
 17 Q. You would leave from Brooklyn, correct?  
 18 A. Yes.  
 19 Q. You did that twice?  
 20 In the whole term of your relationship  
 21 with the companies, you did that twice?  
 22 A. That's what I have done.  
 23 Q. How many times? You said twice before.  
 24 A. Yes, two times (Spanish). Two times  
 25 (English).

[5] (Pages 14 to 17)

[Page 18]

1 F. Hernandez  
 2 Q. How many years did you work for the  
 3 company?  
 4 A. Two and a half years. It was  
 5 approximately two and a half years (English).  
 6 Q. Besides those two trips to the  
 7 Philly/Baltimore loop, did you travel anywhere  
 8 else out of New York?  
 9 A. Of course.  
 10 Q. Where else?  
 11 A. After that route, I cover the route to  
 12 Connecticut getting close to Upstate New York,  
 13 all Upstate New York, New Jersey. Also, almost  
 14 getting to Albany.  
 15 Q. How many times did you make the  
 16 Connecticut route?  
 17 Was it one route in Connecticut, or was  
 18 it multiple?  
 19 A. Several times.  
 20 Q. Could you quantify that?  
 21 Do you know how many times, once a week?  
 22 A. More than two or three weeks.  
 23 Q. Total?  
 24 A. Yes.  
 25 Q. You went a total of --

[Page 19]

1 F. Hernandez  
 2 A. Until they gave me my regular route.  
 3 Q. For two or three weeks, you went to  
 4 Connecticut?  
 5 A. Yes.  
 6 Q. What about the Upstate New York route?  
 7 A. That was the route they assigned me and  
 8 New Jersey.  
 9 Q. Is that the same route, Upstate New York  
 10 and New Jersey?  
 11 A. Yes.  
 12 Q. How often would you make that route?  
 13 A. Approximately, for one year and  
 14 something.  
 15 Q. Every day for one year?  
 16 A. Every day, yes.  
 17 Q. Did you ever have a route in Brooklyn or  
 18 Queens or Manhattan, in Metropolitan New York?  
 19 A. After I did that route, I also did the  
 20 route in Manhattan and also Brooklyn, all Long  
 21 Island.  
 22 Q. How long did you handle those, we'll  
 23 call those Metropolitan New York, routes?  
 24 A. Since I started, for about two years  
 25 (Spanish). Two and a half years (English).

[Page 20]

1 F. Hernandez  
 2 Q. You worked for the company for a total  
 3 of two and a half years you said, right?  
 4 A. Yes (English).  
 5 Q. If you spent one of those years running  
 6 the Upstate New York and New Jersey route, that  
 7 would only leave about a year and a half of  
 8 other routes, correct?  
 9 A. Yes.  
 10 Q. For that other year and a half, how much  
 11 time did you spend in Metropolitan New York and  
 12 Long Island?  
 13 A. And Brooklyn.  
 14 Q. And Brooklyn.  
 15 A. All the time. Whenever they assign me.  
 16 Q. You said previously that you report to  
 17 the building around 4:00 p.m. but that the  
 18 meals wouldn't be ready, maybe some of the  
 19 meals traveling further would be ready at an  
 20 earlier time.  
 21 What time would the Philadelphia or  
 22 Baltimore meals be ready?  
 23 A. Around 5:00 to 6:00 in the afternoon,  
 24 sometimes even later.  
 25 Q. From 4:00 until 5:00 at the absolute

[Page 21]

1 F. Hernandez  
 2 earliest or until 6:00 or 7:00, whenever the  
 3 Philadelphia/Baltimore meals would be ready,  
 4 what would you be doing?  
 5 A. We had to wait there. Also, help with  
 6 the food that wasn't ready most of the time.  
 7 Q. By helping with the food, what do you  
 8 mean?  
 9 A. Pack the food.  
 10 Q. By "pack the food," what do you mean?  
 11 A. You had to pack the food, put it inside  
 12 the box for Fresh Diet, see the menus, where  
 13 they had to be delivered.  
 14 Q. The manifests or menus?  
 15 A. The menu.  
 16 Q. Would you ever work in the kitchen?  
 17 A. No.  
 18 Q. Did you ever do any food preparation?  
 19 A. Yes. We help in a couple occasions.  
 20 Q. How often?  
 21 A. Three or four times.  
 22 Q. Would you always have to pack the food,  
 23 or were there people who worked for one of  
 24 these companies who would pack it on a daily  
 25 basis?

[6] (Pages 18 to 21)



[Page 22]

1 F. Hernandez  
 2 A. Yeah, there were people, but sometimes  
 3 the stuff was not enough for the people to be  
 4 very on time for the food.  
 5 Q. To narrow this down, there were people  
 6 who their job was to pack the food; is that  
 7 correct?  
 8 MR. MOSS: Objection to the  
 9 form, but you can answer.  
 10 A. Yes.  
 11 Q. Your title was not packer, correct?  
 12 A. No.  
 13 Q. How often would you have to pack the  
 14 food if there were people who were already  
 15 supposed to be doing this?  
 16 A. Most of the times, we had to do it.  
 17 Q. What were the packers doing?  
 18 THE INTERPRETER: Say it again.  
 19 Q. The people who their job titles were  
 20 packers, what were they doing if you were doing  
 21 the packing yourself?  
 22 MR. MOSS: Objection to the  
 23 form, but you can answer it.  
 24 A. I said it again that there was not  
 25 enough employees because they had different

[Page 23]

1 F. Hernandez  
 2 schedules.  
 3 Q. What do you mean by "different  
 4 schedules"?  
 5 A. There was people who start early in the  
 6 morning, and there was people who started in  
 7 the afternoon, and they make us, they force us,  
 8 to pack the food if we wanted to leave on time.  
 9 Q. Again, my question is, what were the  
 10 packers doing when you were packing your own  
 11 food?  
 12 MR. MOSS: Objection again.  
 13 MR. MEYER: He's never answered  
 14 the question.  
 15 What's the objection?  
 16 MR. MOSS: To the form.  
 17 You can answer.  
 18 A. I answered the question (English).  
 19 Q. What were the packers doing?  
 20 A. Doing the same thing that we was doing  
 21 (English).  
 22 Q. They were packing alongside you?  
 23 A. Packing, yeah, preparing the food,  
 24 waiting for the kitchen to finish, you know,  
 25 the meal and to pack it up (English).

[Page 24]

1 F. Hernandez  
 2 Q. You're saying they weren't doing their  
 3 job, or they weren't doing it fast enough?  
 4 MR. MOSS: Objection to the  
 5 form.  
 6 That's not what he said.  
 7 MR. MEYER: He can clarify.  
 8 MR. MOSS: I just want to object  
 9 to the form.  
 10 That's a mischaracterization of  
 11 his testimony.  
 12 A. You want me -- I can answer the same  
 13 thing. The food, the meals, were not, most of  
 14 the times, ready, so the packers had to wait  
 15 for the meals to be ready, so then we pack it  
 16 in the box.  
 17 Q. The food wasn't ready yet when you got  
 18 there at 4:00?  
 19 MR. MOSS: Asked and answered.  
 20 MR. MEYER: That's a different  
 21 question. I never asked that before.  
 22 A. Yes. Most of the times, the food wasn't  
 23 ready.  
 24 Q. If the food wasn't ready and your job  
 25 was a driver to deliver the food, why would you

[Page 25]

1 F. Hernandez  
 2 show up at 4:00 to work when there was nothing  
 3 for you to do?  
 4 A. Because that was what my manager asked  
 5 me or requested me to do. He forced me.  
 6 Otherwise, I would lose my job.  
 7 Q. Who told you that?  
 8 A. Syed Hussain.  
 9 Q. How did he tell you that?  
 10 He told you over the phone, verbally  
 11 when you showed up one day?  
 12 How did he tell you?  
 13 A. He always said it in person. Sometimes  
 14 he call you on the phone.  
 15 He always said it, that he needed us at  
 16 that time, and that was not our problem that  
 17 the food wasn't ready.  
 18 MR. MEYER: Can you just repeat  
 19 that answer?  
 20 (Whereupon, the record was read  
 21 by the reporter.)  
 22 A. But he also said it in person (English).  
 23 Q. You get there at 4:00 every day?  
 24 MR. MOSS: Asked and answered.  
 25 Asked and answered.

[7] (Pages 22 to 25)

[Page 26]

1 F. Hernandez  
 2 Q. How many days a week did you work?  
 3 A. Seven days, every day.  
 4 Q. You worked seven days a week?  
 5 A. Of course.  
 6 Q. Did you always work seven days a week?  
 7 A. Yes.  
 8 Q. If we went back and looked at your  
 9 manifest and your notes, it would show you  
 10 working seven days a week for two and a half  
 11 years?  
 12 A. Except when I started at the beginning,  
 13 but otherwise, I always went there working  
 14 almost every day.  
 15 Q. You said "almost".  
 16 A. Most of the time, yes.  
 17 Q. At the beginning, you were a substitute  
 18 driver, correct?  
 19 A. Yeah.  
 20 Q. Did you work seven days a week as a  
 21 substitute?  
 22 A. No. When I started, no.  
 23 Q. How many days a week did you work as a  
 24 substitute driver?  
 25 THE INTERPRETER: Excuse me.

[Page 27]

1 F. Hernandez  
 2 Could I ask something, please? Could  
 3 you tell him to stop --  
 4 MR. MEYER: He understands what  
 5 I'm saying. He could answer it English.  
 6 MR. MOSS: Is there a question  
 7 pending right now?  
 8 Q. How many days a week did you work as a  
 9 substitute?  
 10 A. You repeated the same thing again.  
 11 Q. We never got an answer.  
 12 MR. MOSS: You can answer.  
 13 A. Four or five days.  
 14 Q. For how long did you work as a  
 15 substitute driver for the company?  
 16 A. Seems to me like a month or less.  
 17 Q. From mid April 2010, that's when you  
 18 said you started, until when?  
 19 A. Up until July.  
 20 Q. What point in July?  
 21 A. What is it that you want to know?  
 22 Q. What day in July did you stop working as  
 23 a substitute driver?  
 24 A. I wasn't as a substitute up to that  
 25 time.

[Page 28]

1 F. Hernandez  
 2 Q. You just said you worked as a substitute  
 3 through July of 2010. I asked you what day in  
 4 July did you stop working as a substitute.  
 5 A. I wasn't covering up to July. After  
 6 May, I started my regular route (Spanish). I  
 7 didn't say July (English).  
 8 Q. What time in May?  
 9 A. I don't remember that.  
 10 Q. Was it the beginning, middle, end?  
 11 A. I don't remember.  
 12 Q. At some point in May 2010, you were no  
 13 longer a substitute.  
 14 Did you have a different title?  
 15 Were you called a full-time driver or  
 16 just a driver?  
 17 A. Yes, I was a regular driver.  
 18 Q. How many days a week would you work  
 19 starting in May 2010?  
 20 MR. MOSS: Asked and answered.  
 21 Objection, asked and answered.  
 22 MR. MEYER: Not in May 2010.  
 23 MR. MOSS: You can answer.  
 24 A. Seven days a week.  
 25 Q. We can go through every month from

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1 F. Hernandez  
 2 May 2010 until the end of your time with the  
 3 company, but you're saying you worked about  
 4 seven days a week from there until you stopped  
 5 working, correct?  
 6 A. Of course, unless I was sick a day or  
 7 something.  
 8 Q. How many days were you sick?  
 9 A. Not many times.  
 10 Q. Was there any reason why the company  
 11 wouldn't make a delivery on certain days?  
 12 A. When there was a holiday, maybe once,  
 13 but most of the time, they were working all the  
 14 time.  
 15 Q. There was no set day of the week where  
 16 the company would not make deliveries; is that  
 17 correct?  
 18 A. Every day, we have to do it.  
 19 Q. Would you make deliveries on  
 20 Thanksgiving Day?  
 21 A. I don't remember. It seems to me that  
 22 we did, but some -- in Thanksgiving, it seems  
 23 to me it was the next day we start to do the  
 24 deliveries early. On Thanksgiving Day.  
 25 Q. What about Christmas?

[8] (Pages 26 to 29)



[Page 30]

1 F. Hernandez  
 2 A. Also, on Christmas.  
 3 Q. So yes, you make deliveries on  
 4 Christmas?  
 5 A. Yes.  
 6 Q. Christmas Eve?  
 7 A. I don't remember.  
 8 Q. What about New Year's Eve?  
 9 A. No.  
 10 Q. Were there any other holidays that you  
 11 can recall that you would not make deliveries?  
 12 A. I think something like July 4th or the  
 13 5th. The 4th we had to do it early, to report  
 14 early to do it.  
 15 Q. When you would leave the building, we'll  
 16 call it the building for now, in Brooklyn to  
 17 handle the New York and Upstate runs, or the  
 18 Connecticut runs for that matter, what time  
 19 would you leave the facility?  
 20 A. There was not a specific time because  
 21 the food wasn't ready most of the times early.  
 22 Q. If the food wasn't ready early, what  
 23 time would the food normally be ready?  
 24 A. After 7:00, 8:00, 9:00 p.m. Depends.  
 25 Q. If you were doing the New Jersey or

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1 F. Hernandez  
 2 Connecticut runs, we'll say all the runs  
 3 excluding the two times you went to Baltimore  
 4 and Philly and excluding the Long Island,  
 5 Metro New York boroughs, the five boroughs, you  
 6 would leave somewhere between 7:00 and  
 7 9:00 p.m., correct?  
 8 A. Yes.  
 9 Can you repeat about Connecticut?  
 10 Q. If you were driving to Upstate New York  
 11 or Connecticut or New Jersey --  
 12 A. With Connecticut was temporary.  
 13 Q. Connecticut, you said, I think was two  
 14 to three weeks or so?  
 15 A. Yeah.  
 16 Q. Would you leave for the Connecticut run  
 17 the same time you would leave for the New  
 18 Jersey/Upstate New York runs?  
 19 A. Yes (English).  
 20 Q. That was somewhere between 7:00 and  
 21 9:00, correct?  
 22 A. Yes (English).  
 23 Q. If you left at 7:00, what time would the  
 24 food be ready?  
 25 A. I repeat to you that it depend of the

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1 F. Hernandez  
 2 packers and us taking it.  
 3 Q. How many bags would you have on average  
 4 on that Upstate New York/New Jersey run?  
 5 A. Approximately, thirty to forty bags it  
 6 seems to me.  
 7 Q. When they were in your car, would they  
 8 be in your trunk or the backseat? Where would  
 9 you put them?  
 10 A. In the front seat and the seat, on the  
 11 rear seat, nothing in the trunk.  
 12 Q. Would you put the bags actually in your  
 13 car?  
 14 A. Of course.  
 15 Q. How long would it take you to put thirty  
 16 to forty bags in your car?  
 17 A. You had to be careful with the bags, and  
 18 you take time to do it and check the manifest  
 19 with the names of the clients.  
 20 Q. My question still is, how long would it  
 21 take you to pack the car with thirty to forty  
 22 bags?  
 23 A. Approximately, two to three hours.  
 24 Q. Say it took you three hours to put forty  
 25 bags in.

[Page 33]

1 F. Hernandez  
 2 You're talking it would take you one  
 3 hour to put twelve to thirteen bags in your  
 4 car?  
 5 A. Sometimes they were missing boxes, and  
 6 you had to wait. So how would you do it?  
 7 Q. What do you mean by "boxes"?  
 8 A. I didn't mention boxes (English).  
 9 THE INTERPRETER: Did I say  
 10 boxes?  
 11 MR. MEYER: You said boxes.  
 12 THE INTERPRETER: I'm sorry.  
 13 Bags, I meant. I'm sorry. That was my  
 14 mistake.  
 15 Q. If a bag was missing, that would take  
 16 additional time is what you're telling me,  
 17 correct?  
 18 A. Of course.  
 19 Q. If you had a run or a route in Queens or  
 20 Brooklyn, Manhattan or Long Island for that  
 21 matter, would it still be about thirty to forty  
 22 bags?  
 23 A. Most of the times when you go to the  
 24 boroughs, it was more bags.  
 25 Q. Approximately, how many?

[9] (Pages 30 to 33)

[Page 34]

1 F. Hernandez  
 2 A. Forty to seventy or eighty bags.  
 3 Q. How long would it take you to pack your  
 4 car with eighty bags?  
 5 A. Took me a long time.  
 6 Q. How many hours?  
 7 How many minutes?  
 8 How many hours?  
 9 A. About four hours.  
 10 Q. If you had a --  
 11 A. Four and a half hours.  
 12 Q. If you had a New York City run with  
 13 eighty bags in your car, what time would the  
 14 food be ready?  
 15 A. The same. The same. There was no time.  
 16 Most of the time, they finish it -- most  
 17 of the time, they had that problem with the  
 18 food, that it wasn't on time.  
 19 Q. It was late?  
 20 A. Yes.  
 21 Q. It could be 9:00, sometimes later?  
 22 A. After I went, you know, I was assigned  
 23 to Manhattan or the boroughs. Most of the  
 24 time, it wasn't ready (English).  
 25 Q. If you don't get the food until 9:00,

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1 F. Hernandez  
 2 which is pretty common, correct?  
 3 A. Yes.  
 4 Q. You're saying the food wasn't cooked  
 5 until 9:00 or wasn't packed in the bags until  
 6 9:00?  
 7 A. I said it was not packed most of the  
 8 times.  
 9 Q. When we're talking that 7:00 to 9:00  
 10 window, that's the window I'm using for when  
 11 you're saying the food was ready generally.  
 12 You're saying that the food was prepared  
 13 then, but it wasn't packed until somewhere  
 14 between 7:00 and 9:00; is that correct?  
 15 A. Yes. Sometimes the kitchen was not --  
 16 most of the times, it wasn't -- and the food  
 17 wasn't ready.  
 18 Q. Physically not ready?  
 19 It was still being cooked, correct?  
 20 A. Yes.  
 21 And after that, you had to pack it, to  
 22 finish packing.  
 23 Q. When you say "packing," you mean pack it  
 24 in containers that would then go into the bags  
 25 or --

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1 F. Hernandez  
 2 A. Yes. They had to put it in bags, yes.  
 3 Q. Say the food's not cooked, finished,  
 4 done being cooked, until 7:00.  
 5 Is that possible?  
 6 A. Of course, yes.  
 7 Q. Once it's done, we'll say 7:00. The  
 8 food's done being prepared in the kitchen,  
 9 physically being cooked.  
 10 It then has to be put in some sort of  
 11 container, right, to be shipped?  
 12 A. Yes (English).  
 13 Q. That takes some time, correct?  
 14 A. Yeah (English).  
 15 Q. Who would do that?  
 16 A. The employees of Fresh Diet.  
 17 Q. The employees of the kitchen?  
 18 A. Yeah (English).  
 19 Q. It would then be in those containers,  
 20 which then would be put into the bags that you  
 21 deliver; is that correct?  
 22 A. Yes.  
 23 Q. If the food is not physically ready, the  
 24 food's sitting on a plate right here, it's not  
 25 ready until 7:00 p.m., and then it has to be

[Page 37]

1 F. Hernandez  
 2 put into a container by somebody in the  
 3 kitchen, into a tray?  
 4 A. Can you repeat the question?  
 5 Q. If the food is being prepared in the  
 6 kitchen, being cooked, right, and it's not  
 7 ready, literally being taken out of a pot or  
 8 out of the oven at 7:00 p.m., which you said  
 9 was possible, correct?  
 10 A. Most of the time, they're always, not  
 11 every day.  
 12 Q. But sometimes, correct? That's what you  
 13 said.  
 14 A. Yeah.  
 15 Q. If it's coming out of the oven at 7:00,  
 16 it has to be put into some sort of a container,  
 17 right, into a tray with a lid or a plate with a  
 18 cover on it?  
 19 It has to be put into something,  
 20 correct?  
 21 A. Yes.  
 22 Q. And that takes time?  
 23 A. Yes.  
 24 Q. Those are done by employees in the  
 25 kitchen, correct?

[10] (Pages 34 to 37)

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1 F. Hernandez  
 2 A. Yes.  
 3 Q. Once the food is cooked and then put  
 4 into a container, onto a plate or a tray, those  
 5 are then moved to a bag, correct?  
 6 A. Yes.  
 7 Q. If you know, once the food is physically  
 8 cooked, from the second it comes out of the  
 9 oven until the time it's in the bag ready to be  
 10 put into your car, how much time is that?  
 11 MR. MOSS: I'm going to object  
 12 to that because it calls for  
 13 speculation.  
 14 MR. MEYER: He knows the  
 15 process. He knows.  
 16 THE WITNESS: Can I respond  
 17 (English)?  
 18 MR. MOSS: If you know.  
 19 Q. How much time does it take, you know how  
 20 the operation works, from the minute the food  
 21 comes out of the oven, or out of whatever  
 22 machine it's coming out of, until the time that  
 23 it's packaged and then placed into the bags?  
 24 How much time is that?  
 25 MR. MOSS: Same objection.

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1 F. Hernandez  
 2 You can answer.  
 3 A. I don't know that. I don't know the  
 4 time. It depends on them.  
 5 Sometimes there is not even enough bags  
 6 to bag the food. Sometimes there was not even  
 7 enough bags.  
 8 Q. When the food comes out of the kitchen,  
 9 it's placed into bags.  
 10 At what time of the day or night are all  
 11 those bags ready to go to be moved into your  
 12 car, not packed yet, moved into your car,  
 13 loaded into your car?  
 14 What time are the bags all ready to go?  
 15 A. Sometimes even 7:00, 8:00 at night.  
 16 6:00 to 7:00 at night. It depends.  
 17 Q. We were talking about 7:00 to 9:00.  
 18 You're saying all the bags are  
 19 physically ready to be loaded into your car  
 20 somewhere between 7:00 and 9:00?  
 21 A. More or less.  
 22 Q. If you have eighty bags to be loaded in  
 23 your car if you're running a New York City  
 24 route with eighty deliveries or eighty bags and  
 25 the food's ready at 9:00, the bags are ready,

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1 F. Hernandez  
 2 it could take you up to four and a half hours  
 3 to pack your car.  
 4 That's what you said, correct?  
 5 A. It all depends on when they have  
 6 finished. Also, you had to be careful.  
 7 Q. I understand. You don't want to stack  
 8 the bags.  
 9 A. Because there was always a problem.  
 10 They was always threatening you that they will  
 11 fire us and things like that. They also charge  
 12 us.  
 13 Q. If you have eighty bags in your car, you  
 14 could have a pickup truck or a suburban, and  
 15 fitting eighty bags is still going to be a  
 16 tight squeeze, correct? It's a lot of bags.  
 17 A. It depend on the type of vehicle that  
 18 you have. Sometime when I have eighty bags, I  
 19 had to rent a vehicle.  
 20 Q. If you have eighty bags, how long does  
 21 it take you to deliver those eighty bags, on  
 22 average?  
 23 A. It would take me approximately five to  
 24 six hours, five and a half to six hours.  
 25 Q. Was there a time that you were told or

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1 F. Hernandez  
 2 was there a time that was basically company  
 3 policy that all deliveries had to be made by?  
 4 A. 5:00 a.m. Sometime the manager allow us  
 5 to finish a little bit later, depend of the  
 6 circumstances.  
 7 MR. MOSS: Can we take a quick  
 8 restroom break?  
 9 MR. MEYER: Sure.  
 10 (Whereupon, a recess was taken  
 11 at this time.)  
 12 Q. I just want to go back and touch on the  
 13 Philadelphia and Baltimore runs you said you  
 14 did a couple times, about two times.  
 15 How many bags would you have on those  
 16 runs?  
 17 A. Approximately, more than -- there were  
 18 many bags. More than eighty approximately.  
 19 Maybe one hundred.  
 20 Q. Eighty to one hundred is a good  
 21 estimate?  
 22 A. Probably more than one hundred  
 23 (English).  
 24 Q. Would you deliver those to homes and  
 25 residences in Baltimore and Philadelphia, or

[11] (Pages 38 to 41)

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1 F. Hernandez  
 2 would you just drop them off at a central  
 3 location and they would be taken from there?  
 4 A. At the place they assign me where there  
 5 were drivers waiting.  
 6 Q. You just, in effect, transferred the  
 7 bags from the Brooklyn facility to a meeting  
 8 point in Baltimore/Philly, and that was your  
 9 job?  
 10 A. Yeah (English).  
 11 Q. You said you go to Baltimore first then  
 12 Philly or Philly then Baltimore?  
 13 A. First Philadelphia.  
 14 Q. Baltimore would be the last stop.  
 15 Once you made your drop-off in  
 16 Baltimore, you would drive back to New York?  
 17 A. Yes, to take the bags again, empty them  
 18 and hang them.  
 19 Q. The used bags?  
 20 A. They need it for the next day (English).  
 21 Q. These would be the bags you would pick  
 22 up at the drop-off point --  
 23 A. The bags, yeah (English).  
 24 Q. -- from the drivers that day?  
 25 A. Yeah (English).

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1 F. Hernandez  
 2 MR. MOSS: I want you to wait  
 3 until he's done asking his question  
 4 before you answer. The stenographer  
 5 can't get two voices at once.  
 6 THE WITNESS: Okay (English).  
 7 Q. If you were delivering eighty bags, say  
 8 a New York City run, how many bags would you  
 9 pickup on that route?  
 10 A. Fifty or so. Depend on the clients.  
 11 Q. What do you mean?  
 12 By "depend on the clients," what does  
 13 that mean?  
 14 A. The clients from Fresh Diet leave the  
 15 bags outside.  
 16 Q. If they didn't leave them outside,  
 17 obviously, you couldn't return them, correct?  
 18 A. Exactly, or they leave it with the --  
 19 depends on who was at the building or the  
 20 doorman.  
 21 Q. Sometimes the client just would fail to  
 22 leave the bags for the delivery guy, so you  
 23 wouldn't have any bags to take back, correct?  
 24 A. Yes (English).  
 25 Q. When you would deliver and drop those

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1 F. Hernandez  
 2 bags back off in Brooklyn, would you do that  
 3 after every run, after every day?  
 4 A. Every day (English).  
 5 Q. To your knowledge, would all the other  
 6 drivers do the same?  
 7 MR. MOSS: Objection to the  
 8 extent it calls for conjecture, but you  
 9 can answer.  
 10 THE INTERPRETER: Excuse me. Do  
 11 you want me to translate, or they going  
 12 to continue without the translator  
 13 because they not allowing me to  
 14 translate? Do they want to continue in  
 15 English, and if they need me, I can  
 16 address or what?  
 17 MR. MEYER: I don't think it's  
 18 necessary.  
 19 THE INTERPRETER: Excuse me?  
 20 MR. MEYER: I don't think it's  
 21 necessary for a translator.  
 22 MR. MOSS: Is there a question  
 23 pending?  
 24 Q. The question is, to your knowledge --  
 25 MR. MOSS: Answer the question,

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1 F. Hernandez  
 2 and then if we can go off the record,  
 3 we'll discuss whether or not we want to  
 4 continue with a translator.  
 5 Q. To your knowledge, based upon speaking  
 6 with other drivers, do you know if those  
 7 drivers at the end of those routes would also  
 8 drop their bags off at the Brooklyn facility?  
 9 THE INTERPRETER: Can you repeat  
 10 the question, please?  
 11 (Whereupon, the record was read  
 12 by the reporter.)  
 13 A. Yes.  
 14 Q. They would do this every day?  
 15 A. Yes.  
 16 Q. Were you ever notified by anyone who you  
 17 would call Manager or Supervisor that employees  
 18 or drivers, whatever you want to call them,  
 19 were not returning the bags at the end of the  
 20 day and that this is something that must be  
 21 done?  
 22 MR. MOSS: I'm going to object  
 23 to the form.  
 24 You can answer.  
 25 A. I was not a boss.

[12] (Pages 42 to 45)

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1 F. Hernandez  
 2 Q. That's not my question.  
 3 My question was, do you recall receiving  
 4 a notice from the companies that the drivers  
 5 were not dropping their bags off at the end of  
 6 the day and that that must be done on a daily  
 7 basis?  
 8 MR. MOSS: Same objection.  
 9 You can answer.  
 10 A. The manager didn't request to return all  
 11 of the bags to all of the drivers.  
 12 Q. The managers did or did not?  
 13 A. Yes, he request, and he required. Yes,  
 14 he did require. Otherwise, we would be in  
 15 problem. We would be in trouble.  
 16 Q. My question remains the same.  
 17 Do you remember receiving a notice from  
 18 someone at the companies advising you that all  
 19 drivers were required to drop-off the bags at  
 20 the end of the day because the drivers were not  
 21 doing that?  
 22 A. Yes.  
 23 Q. When was that?  
 24 A. I don't remember.  
 25 Q. Mr. Hernandez, I'm going to show you

[Page 47]

1 F. Hernandez  
 2 what's marked, this was from your attorney's  
 3 production, as -- it's Bates stamped as  
 4 FD000101 (handing).  
 5 MR. MEYER: I don't have copies,  
 6 I apologize.  
 7 Q. If you could, take a look at that. Once  
 8 you reviewed it, let me know.  
 9 Does that look familiar to you?  
 10 A. Of course (English).  
 11 Q. What is it?  
 12 Please, explain what it is.  
 13 A. That's my route, the stops that I made,  
 14 and my deductible. I made notes on the bottom  
 15 that I was missing, that I was lacking.  
 16 Q. For what week is this?  
 17 What period of time are we talking  
 18 about?  
 19 A. 3/9 to 3/15/2012.  
 20 Q. That's a full week, correct?  
 21 A. Yes.  
 22 Q. The days of the week are written down  
 23 the right-hand side of that page?  
 24 A. Can you repeat the question?  
 25 Q. There's a right-hand column there with

[Page 48]

1 F. Hernandez  
 2 words.  
 3 Is that your handwriting down this  
 4 column right here (indicating)?  
 5 A. Yes.  
 6 Q. That your handwriting?  
 7 A. Yes (English).  
 8 Q. That's in English, correct?  
 9 A. Of course, yes.  
 10 Q. Can you read off those days?  
 11 A. Friday, Sunday, Monday, Tuesday,  
 12 Wednesday, and Thursday.  
 13 Q. Is that six or seven days?  
 14 A. Six days, but I want to explain to you  
 15 why seven days.  
 16 Q. Feel free.  
 17 A. The delivery on Friday, it was a double  
 18 delivery for the clients for Fresh Diet for the  
 19 next day, and they needed you to return the  
 20 empty bags. We started on Friday, and we were  
 21 held on Saturday in the morning to return to  
 22 bags and hang them and to take out the ice  
 23 packs at the company, and that take time.  
 24 Q. Did you make any deliveries, based upon  
 25 that sheet, on Saturday evening?

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1 F. Hernandez  
 2 A. No, Friday night, but I always ended  
 3 like Saturday morning.  
 4 Q. I asked about Saturday night.  
 5 Did you make any deliveries on Saturday  
 6 night?  
 7 A. No Saturday night.  
 8 Q. Did you ever make any deliveries on  
 9 Saturday nights?  
 10 A. No.  
 11 Q. So you only worked six days a week?  
 12 MR. MOSS: Objection to the  
 13 form.  
 14 You can answer.  
 15 A. You consider that six days a week  
 16 (English)?  
 17 Q. Yes.  
 18 A. That's not six days a week (English).  
 19 Q. I don't see Saturday on there.  
 20 A. You don't see Saturday because the  
 21 payroll is on -- you have to put the payroll on  
 22 Thursday, make the payroll. But from my  
 23 understanding, you know, if I'm working on  
 24 Friday, right, and I have to make double  
 25 delivery for the clients on the next day, that

[13] (Pages 46 to 49)



[Page 50]

1 F. Hernandez  
 2 means that I return back to work, so I'm saying  
 3 to the facility, to return the bags and hang  
 4 the bags and fill out the paper and do  
 5 paperwork that they need. And that's  
 6 considered another day, right (English)?  
 7 **Q.** How many shifts would you work in a  
 8 given week?  
 9 A. More than seventy hours.  
 10 **Q.** Would you make deliveries Monday night  
 11 into Tuesday morning?  
 12 A. Yes.  
 13 **Q.** Would you make deliveries on Tuesday  
 14 night into Wednesday morning?  
 15 A. Yes.  
 16 **Q.** Would you make deliveries on Wednesday  
 17 night into Thursday morning?  
 18 A. Yes.  
 19 **Q.** Would you make deliveries on Thursday  
 20 night into Friday morning?  
 21 A. Yes.  
 22 **Q.** That's four days, I think, as of right  
 23 now, correct?  
 24 That's four shifts?  
 25 A. But you missed Sunday (English).

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1 F. Hernandez  
 2 **Q.** I didn't ask you a question yet.  
 3 Did you make deliveries on Friday nights  
 4 into Saturday mornings?  
 5 A. Yes.  
 6 **Q.** Did you make deliveries on Saturday  
 7 nights into Sunday mornings?  
 8 A. No, no Saturdays.  
 9 **Q.** No Saturdays.  
 10 So there was a shift you didn't work?  
 11 **MR. MOSS:** Objection to the  
 12 form.  
 13 You can answer.  
 14 A. You consider that that's not working?  
 15 **Q.** I'm not getting into a semantics game  
 16 with you. I'm asking you if you worked six or  
 17 seven shifts a week.  
 18 **MR. MOSS:** Let's not badger the  
 19 witness. Okay?  
 20 **MR. MEYER:** I'm asking for an  
 21 honest answer and not a semantics game.  
 22 A. I'm being honest with you (English).  
 23 **MR. MOSS:** Don't engage either.  
 24 Okay?  
 25 **THE WITNESS:** I'm sorry.

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1 F. Hernandez  
 2 **Q.** If you give me an honest answer, we'll  
 3 move on past this.  
 4 A. For me, seven days.  
 5 **Q.** Let's back up again.  
 6 You said this is your record, correct?  
 7 A. Yes.  
 8 **Q.** When did you put this together?  
 9 A. Every time. Most of the times I had to  
 10 do a route.  
 11 **Q.** You would keep this contemporaneously or  
 12 at the same time as you were making your  
 13 deliveries?  
 14 A. Most of the time, yes, but sometimes no.  
 15 **Q.** When you say "sometimes no," would you  
 16 do it after, a couple weeks after?  
 17 A. All depends how I was feeling, and I  
 18 trusted the company.  
 19 **Q.** This is from a notebook, correct?  
 20 A. Yes.  
 21 **Q.** It has a spiral binding on it?  
 22 A. No. I don't understand.  
 23 **Q.** I'll show you another one.  
 24 It's marked 104, same thing, FD000104.  
 25 **MR. MOSS:** This is Exhibit 2?

[Page 53]

1 F. Hernandez  
 2 **MR. MEYER:** We'll call it 2.  
 3 I'm just showing him for reference  
 4 purposes. I'm not admitting them,  
 5 putting them in evidence.  
 6 **MR. MOSS:** Then it's not  
 7 Exhibit 2.  
 8 **Q.** Do you see the bottom right-hand side  
 9 where there's a spiral there?  
 10 Are these pages part of a notebook, or  
 11 are they individual loose pieces of paper?  
 12 A. Yes, for a notebook.  
 13 **MR. MEYER:** I call for the  
 14 production of the original notebook.  
 15 **MR. MOSS:** Please put your  
 16 requests in writing pursuant to the  
 17 Federal rules, and we will deal with it  
 18 accordingly.  
 19 **Q.** Did you put any of this together,  
 20 meaning this notebook and these notes that you  
 21 kept, after your employment with the companies  
 22 ended?  
 23 A. What do you mean, I ended?  
 24 **Q.** After when you said your last day was,  
 25 around July of 2012.

[14] (Pages 50 to 53)

[Page 54]

1 F. Hernandez  
 2 A. No.  
 3 Q. You didn't make any of these notes after  
 4 July of 2012?  
 5 A. No.  
 6 Q. Let me show you this again. I'll show  
 7 the first one, 103. This is the first document  
 8 I showed you (handing).  
 9 Can you just explain to me what  
 10 information is on there?  
 11 What does each input mean?  
 12 Let's start with this line right here  
 13 (indicating).  
 14 A. These are the hours.  
 15 Q. The first column is the hours?  
 16 A. Yes, that I worked.  
 17 Q. Then there's an annotation. I think it  
 18 says "New York 5" or "New York --"  
 19 A. No, New York S (English).  
 20 Q. New York S.  
 21 What is that?  
 22 A. That's the code that the company have  
 23 for the route.  
 24 Q. That's the route name, the code for the  
 25 route name?

[Page 55]

1 F. Hernandez  
 2 A. Yes.  
 3 Q. Then there's a number after that.  
 4 What is that number?  
 5 A. That was the stop.  
 6 Q. The number of deliveries you had to  
 7 make?  
 8 A. On that day, on Friday, the route was  
 9 lower.  
 10 Q. That's why it says forty and then stops.  
 11 There's sixty-seven stops? That's what  
 12 that means?  
 13 A. We also had to sometime look for the key  
 14 for the clients. That was not included in the  
 15 stop. You have to go to get the key first.  
 16 Otherwise, they would fire us (Spanish). It  
 17 was always threats (English).  
 18 Q. Then the last column is the day of week,  
 19 which you read off already.  
 20 Is this when the route would start or  
 21 when it would end?  
 22 A. It ended Friday night but, they started  
 23 early Saturday morning.  
 24 Q. When you say "Friday" on this, it means  
 25 you started on Friday and went into Saturday

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1 F. Hernandez  
 2 morning?  
 3 A. We started Sunday.  
 4 Q. We'll go to the next one where it says  
 5 Sunday NY S, which is New York S, that's the  
 6 route, sixty-seven stops; is that correct?  
 7 And then it says Sunday.  
 8 That means starting Sunday evening into  
 9 Monday morning you made sixty-seven stops?  
 10 A. Yes.  
 11 Q. You started on the Sunday?  
 12 That day started on a Sunday and rolled  
 13 over to a Monday?  
 14 A. Yes, but we didn't start on Friday. We  
 15 didn't start on Friday.  
 16 Q. Up here, you had started on Friday.  
 17 This one was a Friday (indicating).  
 18 A. This is because there was not enough  
 19 space. I put it up there.  
 20 Q. I'm not saying it went in that order.  
 21 These are all the days you worked  
 22 between March 9th and March 16th or 15th?  
 23 A. Yes.  
 24 Q. Whatever date is in this last column,  
 25 that means you started on that Friday between

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1 F. Hernandez  
 2 7:00 and 9:00 p.m., or that's when your bags  
 3 were ready was on a Friday night, and then you  
 4 would go until Saturday morning (indicating)?  
 5 MR. MOSS: Objection to the  
 6 form, but you can answer.  
 7 A. Most of the time on a Friday because it  
 8 was less deliveries, the food was most of the  
 9 time ready.  
 10 Q. That's just when the day would start  
 11 would be on Friday?  
 12 A. No. We started on Sunday.  
 13 Q. I'm not talking about the week. I'm  
 14 talking about any one of these (indicating).  
 15 Isolate one of these.  
 16 See, this one just says Tuesday  
 17 (indicating). Okay?  
 18 Would you start your day, on that  
 19 specific line, at Tuesday between 7:00 and  
 20 9:00 p.m. loading the bags into your car?  
 21 MR. MOSS: Objection.  
 22 Q. I'm not saying start time.  
 23 I'm just saying loading the cars on a  
 24 Tuesday afternoon/evening, you would then  
 25 finish on a Wednesday?

[15] (Pages 54 to 57)

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1 F. Hernandez  
 2 A. I don't understand.  
 3 Q. What does the Tuesday mean there?  
 4 A. Tuesday.  
 5 Q. Is that when you would start work that  
 6 day?  
 7 Would you start on a Tuesday?  
 8 A. It did not start on Tuesday.  
 9 Q. You didn't work on a Tuesday?  
 10 A. I work on Tuesday (English).  
 11 Q. What time did you start work on Tuesday?  
 12 A. I don't want to --  
 13 MR. MEYER: I don't want to get  
 14 into a semantics game. He knows exactly  
 15 what I'm saying.  
 16 MR. MOSS: Okay. Is there a  
 17 question pending?  
 18 Q. The question is, isolate any one of  
 19 these. It says Tuesday right here  
 20 (indicating). Okay?  
 21 I'm not saying that's the day of the  
 22 week you started working, but on this day, you  
 23 ran the New York S route and made ninety-five  
 24 stops.  
 25 Did you start those ninety-five stops on

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1 F. Hernandez  
 2 Tuesday?  
 3 A. Yes.  
 4 Q. Thank you. That's all I wanted.  
 5 A. But I didn't start on a Tuesday.  
 6 MR. MOSS: Let's take a break.  
 7 I'm going to speak with my client  
 8 outside.  
 9 MR. MEYER: Please.  
 10 (Whereupon, a recess was taken  
 11 at this time.)  
 12 Q. Let's change courses a little bit here.  
 13 I'm going to show you a couple of  
 14 documents, and again, it's just to confirm your  
 15 signature or your knowledge of certain  
 16 documents.  
 17 I'm going to show you what's titled a  
 18 verification which purportedly has your  
 19 signature on it (handing).  
 20 Is that your signature (indicating)?  
 21 A. Yes.  
 22 Q. Do you recall signing this document?  
 23 A. I don't remember.  
 24 MR. MOSS: Is this an exhibit,  
 25 Jeff?

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1 F. Hernandez  
 2 MR. MEYER: We can call it  
 3 Exhibit 1.  
 4 Can we go off for a second?  
 5 (Whereupon, a discussion was  
 6 held off the record.)  
 7 Q. Here's what we'll call Exhibit 4, which  
 8 is Plaintiff's interrogatory responses, and  
 9 Exhibit 5, which is Plaintiff's document  
 10 responses without the documents (handing).  
 11 MR. MEYER: We can go off.  
 12 (Whereupon, a discussion was  
 13 held off the record.)  
 14 Q. That is your signature, Mr. Hernandez?  
 15 A. Yes (English).  
 16 Q. Do you understand what that verification  
 17 says?  
 18 A. Yes.  
 19 MR. MEYER: I'll make copies,  
 20 and I'll e-mail them. Everybody has  
 21 these already, but I'll e-mail them back  
 22 around.  
 23 Q. I'm going to show you another now,  
 24 Mr. Hernandez, another affidavit, titled  
 25 "Affidavit of Plaintiff Fernando Hernandez in

[Page 61]

1 F. Hernandez  
 2 Support of Motion for Injunctive Relief  
 3 Retaliation".  
 4 If you could, just review that, and  
 5 confirm that's your signature on the last page  
 6 (handing).  
 7 A. Yes.  
 8 Q. Here's another affidavit titled  
 9 "Affidavit of Plaintiff Fernando Hernandez in  
 10 Support of Preliminary or Conditional  
 11 Collective Action Certification."  
 12 If you could, look at the document, and  
 13 just confirm that it's your signature on the  
 14 last page as well (handing).  
 15 A. Yes.  
 16 Q. With regard to both of the affidavits  
 17 you have in front of you, do you recall reading  
 18 these and signing these?  
 19 A. Yes (English).  
 20 Q. Finally, another affidavit entitled  
 21 "Affidavit of Fernando Hernandez in Support of  
 22 Plaintiff's Motion For Preliminary Class Action  
 23 Certification."  
 24 Can you just take a look at that, and  
 25 confirm that that's your signature as well

[16] (Pages 58 to 61)

[Page 62]

1 F. Hernandez  
 2 (handing)?  
 3 A. (Witness nods head.)  
 4 Q. Is that a yes?  
 5 A. Yes (English).  
 6 Q. Thank you.  
 7 A. You're welcome (English).  
 8 Q. As part of your document production in  
 9 this case through your attorneys, documents  
 10 that you've produced that have been sent to us  
 11 as defense counsel, there were a number of gas  
 12 receipts or receipts for repairs to  
 13 automobiles.  
 14 Do you recall submitting those documents  
 15 to your attorneys for production?  
 16 A. Yes.  
 17 Q. Did you ever submit those receipts to  
 18 anyone at The Fresh Diet or Late Night Express?  
 19 A. Not that I remember. Not that I recall.  
 20 Q. I guess this is just a sampling, but  
 21 there were also, what I'll call right now,  
 22 manifests that your attorneys produced. This  
 23 starts with the Bates stamp of FD001609 and  
 24 runs through 1700.  
 25 If you could, take a look at those for a

[Page 63]

1 F. Hernandez  
 2 moment, and let me know if those look familiar  
 3 to you (handing).  
 4 A. Yes.  
 5 MR. MOSS: I just want the  
 6 record to reflect that this is  
 7 approximately one hundred documents, and  
 8 my client can't --  
 9 MR. MEYER: We'll refer  
 10 specifically to the first page for now.  
 11 MR. MOSS: He can't reasonably  
 12 look at all these right now.  
 13 MR. MEYER: Understood.  
 14 Q. You can keep those in front of you for  
 15 now.  
 16 You said, Mr. Hernandez, that those  
 17 documents look familiar to you, at least the  
 18 first one?  
 19 A. Yes.  
 20 Q. Just so we're clear, I think close to  
 21 1,200, I believe, documents similar to this  
 22 were produced by your counsel to us. I'm not  
 23 asking you to review every one of them.  
 24 MR. MOSS: I don't know the  
 25 number of documents produced either,

[Page 64]

1 F. Hernandez  
 2 so --  
 3 MR. MEYER: Just roughly.  
 4 Q. Do you have, Mr. Hernandez, this  
 5 document or any similar manifests in your  
 6 possession?  
 7 A. Most of the copies, my lawyers have  
 8 them. I have some at home from other days.  
 9 Q. You said the other case?  
 10 THE INTERPRETER: Other days.  
 11 Q. Have you produced all the manifests to  
 12 your attorneys for production to us?  
 13 A. Yes, most of them. All of them.  
 14 MR. MEYER: Please confirm that  
 15 we do have all of the manifests.  
 16 MR. MOSS: I will.  
 17 Q. Mr. Hernandez, the manifests you still  
 18 have in your possession, how did you obtain  
 19 those?  
 20 A. I had them because if they expire --  
 21 when they ask for them, to take them to my  
 22 lawyers. Maybe it's a couple of them.  
 23 Q. Again, your attorneys and I will figure  
 24 out what ones have and haven't been produced.  
 25 In terms of how they ended up in your

[Page 65]

1 F. Hernandez  
 2 apartment in your possession, how did you come  
 3 to keep those, these documents?  
 4 A. They were my personal copies.  
 5 Q. Does the company still have a copy of  
 6 those?  
 7 A. I don't know. Most of the time, they  
 8 had it, but they throw it away.  
 9 Q. How do you know the company threw them  
 10 away?  
 11 A. Because most of the time, they did.  
 12 Q. Who told you that?  
 13 A. I saw it.  
 14 Q. When?  
 15 A. I don't remember.  
 16 Q. Before or after you left the facility to  
 17 make your deliveries?  
 18 A. Can you repeat the question?  
 19 Q. Did you see the company or anybody from  
 20 the company throw them away, the manifests,  
 21 prior to you leaving to make your deliveries or  
 22 once you returned at the end of it?  
 23 A. After I got there or the next day when I  
 24 saw my manager.  
 25 Q. There were two copies of every one of

[17] (Pages 62 to 65)

[Page 66]

1 F. Hernandez  
 2 these manifests?  
 3 You kept one, and the company had one?  
 4 MR. MOSS: Objection to the  
 5 form.  
 6 You can answer.  
 7 A. I made the copies right there for my  
 8 own, and the assistant that he had provide me  
 9 one copy or another driver that help him a lot.  
 10 Q. Let's back up.  
 11 MR. MEYER: Can you repeat that  
 12 answer?  
 13 (Whereupon, the record was read  
 14 by the reporter.)  
 15 Q. Another driver would give you these  
 16 copies, or you made the copies yourself?  
 17 A. Sometimes I did it. Sometimes the  
 18 assistant also did it for me or (Spanish) -- he  
 19 have another driver that help them a lot  
 20 (English).  
 21 Q. Why would you make copies?  
 22 A. For my own protection (English).  
 23 Q. Protection for what?  
 24 A. Because I see that it was not fair, what  
 25 he was doing to us (English).

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1 F. Hernandez  
 2 Q. When did you start making copies of  
 3 these manifests?  
 4 A. Whenever I could, but he asked me  
 5 afterward, but I always made my copies anyway  
 6 when I could, whenever I could, because I know  
 7 that they didn't give the important that they  
 8 supposed to because something or another thing  
 9 with the stop, and I also -- they took away  
 10 money from me, that's why.  
 11 Q. Does it show money on there anywhere?  
 12 Is there any indication as to money on  
 13 these manifests?  
 14 A. No.  
 15 Q. The sum and substance of the manifests  
 16 are basically the client names, addresses, and  
 17 where to make the deliveries; is that correct?  
 18 MR. MOSS: Objection to the  
 19 form.  
 20 You can answer.  
 21 A. Can you repeat the question?  
 22 Q. The substance of these manifests sitting  
 23 in front of you, the content, the info, is the  
 24 client names, their addresses, and where the  
 25 deliveries are supposed to be made; is that

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1 F. Hernandez  
 2 correct?  
 3 A. Yes.  
 4 MR. MOSS: Same objection.  
 5 You can answer.  
 6 A. There's some instructions that they  
 7 didn't write down.  
 8 Q. But there are some instructions on there  
 9 obviously?  
 10 A. Yes.  
 11 Q. Why would you keep lists of client  
 12 names, addresses, and delivery instructions for  
 13 your own protection?  
 14 A. Because I did not consider the manager  
 15 of the company was being fair with us, and I  
 16 had to protect my interest, my own interest,  
 17 because he was taking away money.  
 18 Q. What interest do you have in maintaining  
 19 names and addresses of the company's clients?  
 20 MR. MOSS: Objection to the  
 21 form.  
 22 A. I have no interest in the clients. It  
 23 was my own protection as an employee.  
 24 Q. What were you going to use these for?  
 25 A. As proof of what's going on right now.

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1 F. Hernandez  
 2 Q. If there's nothing else on there  
 3 substantively other than client names,  
 4 addresses, and delivery instructions, how would  
 5 that help you?  
 6 MR. MOSS: Objection.  
 7 Don't answer that because it  
 8 calls for legal advice.  
 9 Q. Why'd you keep them?  
 10 MR. MOSS: You asked, and he  
 11 asked.  
 12 MR. MEYER: He said for  
 13 protection. I said for protection from  
 14 what, and he said to use them in the  
 15 future.  
 16 Q. I want to know why you kept them.  
 17 MR. MOSS: He said he wasn't  
 18 being treated fairly. That was his  
 19 answer.  
 20 MR. MEYER: To keep client names  
 21 and addresses?  
 22 MR. MOSS: The record reflects  
 23 the answers.  
 24 Q. Is there any other reason why you kept  
 25 these documents in your personal possession?

[18] (Pages 66 to 69)



[Page 70]

1 F. Hernandez  
 2 A. None. None. For my own.  
 3 Q. The record may have stated it, but I  
 4 don't think it did.  
 5 When did you start keeping these  
 6 manifests?  
 7 A. I don't remember. When I recently  
 8 started, for months, I didn't keep them. I  
 9 also didn't write it down in my notebook  
 10 because I trusted the company.  
 11 Q. When did you start keeping that  
 12 handwritten notebook with your daily  
 13 deliveries?  
 14 A. I don't remember. When I notice that  
 15 money was being missing.  
 16 They started with one payment, and one  
 17 month or two after they started, they changed  
 18 it, and I consider them was supposed to pay me  
 19 the same salary as all the employees that were  
 20 in the same route that I was (Spanish). They  
 21 didn't treat me fair (English).  
 22 Q. Let me show you what we'll mark as, I  
 23 think, Exhibit 9.  
 24 MR. MOSS: I think it's 12  
 25 because of the --

[Page 71]

1 F. Hernandez  
 2 MR. MEYER: This was 9  
 3 (indicating).  
 4 I believe this is Bates stamped  
 5 as FD000493.  
 6 Q. I'm going to show you, Mr. Hernandez,  
 7 what purports to be a 2010 1099 form (handing).  
 8 Does that look familiar to you?  
 9 A. Supposedly. I lost my copy.  
 10 Q. I think there was a copy that was  
 11 produced from your counsel as well. I think  
 12 you did provide it. I think it was 2010.  
 13 Either way, does that document look  
 14 familiar to you?  
 15 A. Yeah.  
 16 Q. Is that your name and address on that  
 17 document?  
 18 A. Yes.  
 19 Q. Do you see in this box, which is titled  
 20 "Non-Employee Compensation" (indicating)?  
 21 To the best of your knowledge, was that  
 22 your earnings from Late Night Express in 2010?  
 23 A. Those were my earnings, yes.  
 24 When I started to work, he used to pay  
 25 me my check in another account's name.

[Page 72]

1 F. Hernandez  
 2 Q. What other name?  
 3 A. For example, on the employee that I  
 4 recommended for the job.  
 5 Q. You're saying under oath right now that  
 6 all your earnings are not reflected on that  
 7 form?  
 8 A. Yes (English).  
 9 Q. You're saying all your 2010 earnings  
 10 from Late Night Express are not reflected on  
 11 that document?  
 12 A. No, because when I started with some  
 13 type of money, they were paying me \$4 per bag  
 14 for Brooklyn. When the next month, he start to  
 15 reduce it to \$3 per delivery, and he said it to  
 16 me in my face.  
 17 Q. We have two different things here.  
 18 You're saying there's a dispute about  
 19 your per bag rate, correct?  
 20 A. (Witness nods head.)  
 21 Q. Regardless of whether you challenged  
 22 what the number was, but what you actually took  
 23 home per check every week, when you added those  
 24 up, would it be that number?  
 25 A. I never counted the checks at the end of

[Page 73]

1 F. Hernandez  
 2 the year.  
 3 Was it supposed to? This is what they  
 4 would pay me. This is what they would pay me.  
 5 Q. When you got this form, on your 2010 tax  
 6 returns, did you report all of that income?  
 7 MR. MOSS: Objection.  
 8 Don't answer that.  
 9 MR. MEYER: What's the  
 10 objection?  
 11 MR. MOSS: This is a civil case.  
 12 I want him not to answer that.  
 13 Can we go off the record?  
 14 MR. MEYER: Let me finish the  
 15 question first, and then you let him  
 16 plead the Fifth.  
 17 Q. Did you report that income as  
 18 non-employee compensation on your 2010 tax  
 19 return, or did you put it in the box for wages  
 20 on your 2010 tax return?  
 21 MR. MOSS: Objection.  
 22 I'm telling you not to answer  
 23 that question.  
 24 MR. MEYER: On what basis?  
 25 MR. MOSS: Can we go off the

[19] (Pages 70 to 73)

[Page 74]

1 F. Hernandez  
 2 record?  
 3 MR. MEYER: Let's go outside.  
 4 (Whereupon, a discussion was  
 5 held off the record.)  
 6 Q. Mr. Hernandez, I'm now going to show you  
 7 what we'll call Exhibit 11 (handing). It's two  
 8 copies of it, but it's a 2011 1099 form from  
 9 Late Night Express to you.  
 10 Is that your name and address on the  
 11 document?  
 12 A. Yes (English).  
 13 Q. Did you receive this document from Late  
 14 Night Express?  
 15 A. Yes.  
 16 MR. MEYER: I'm going to ask the  
 17 question, you're going to object, and  
 18 we'll go from there.  
 19 Q. On your 2011 tax return, the number  
 20 that's indicated in box number seven entitled  
 21 "Non-Employee Compensation," did you report  
 22 that as wages, or did you report that as  
 23 non-employee compensation?  
 24 MR. MOSS: Same objection.  
 25 Don't answer it.

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1 F. Hernandez  
 2 MR. MEYER: That's fine.  
 3 Q. Now I'm going to show you a 2012 1099  
 4 form from Late Night Express to you,  
 5 Mr. Hernandez.  
 6 Just confirm that that's your address  
 7 again (indicating).  
 8 A. Yes.  
 9 Q. With regard to the figure in box number  
 10 seven, do you recall in which box on your 2012  
 11 tax return that you included this in, being  
 12 either wages or non-employee compensation? Do  
 13 you remember?  
 14 MR. MOSS: Objection. Same  
 15 objection.  
 16 Don't answer that. Don't answer  
 17 anything.  
 18 MR. MEYER: Let's go off the  
 19 record for a minute.  
 20 (Whereupon, a discussion was  
 21 held off the record.)  
 22 (Whereupon, a recess was taken  
 23 at this time.)  
 24 MR. MEYER: I'm just going to  
 25 clarify, not the content of our

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1 F. Hernandez  
 2 discussion but what we're going to do  
 3 procedurally going forward in terms of  
 4 the tax returns.  
 5 Plaintiff's counsel and I had an  
 6 off-the-record discussion. As defense  
 7 counsel, we're going to reserve the  
 8 right to continue Mr. Hernandez's  
 9 deposition on this issue of the tax  
 10 returns if necessary after further  
 11 discussion with Plaintiff's counsel. We  
 12 reserve to right to continue this.  
 13 MR. MOSS: I'm going to reserve  
 14 my right to object to it.  
 15 MR. MEYER: I just want that  
 16 noted on the record, and we'll move  
 17 forward.  
 18 MR. MOSS: Ditto.  
 19 Q. Mr. Hernandez, you talked about multiple  
 20 threats or comments from managers that you or  
 21 other employees had received throughout the  
 22 course of your employment with the company.  
 23 You mentioned threats a couple times in terms  
 24 of returning bags.  
 25 What were some of the specific threats

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1 F. Hernandez  
 2 that were made to you in terms of your job?  
 3 A. They always try to intimidate us every  
 4 day, either do your job or we going to fire  
 5 you, and many times, I was affected. I was  
 6 mostly affected on that situation because some  
 7 reason they were not happy, the manager.  
 8 Q. When did you start receiving these  
 9 threats? I don't want to say threats. The  
 10 intimidation.  
 11 A. Intimidations are also threats to fire  
 12 me.  
 13 Q. Was that soon after you started working  
 14 for the company?  
 15 A. He used those terms with everyone, with  
 16 everybody. I saw that since the beginning.  
 17 Then he started with me the same way.  
 18 Q. How long ago?  
 19 A. Almost all the time I was there.  
 20 Q. The "he" that you're referring to is  
 21 who?  
 22 A. I am referring to Syed Hussain.  
 23 Q. You said there was intimidation and  
 24 threat of losing your job, or do your job or  
 25 you'll be fired.

[20] (Pages 74 to 77)

[Page 78]

1 F. Hernandez  
 2 Were there any other types of threats or  
 3 intimidation directed to you or other  
 4 employees?  
 5 What else did Syed say to you that you  
 6 thought was intimidating or threatening?  
 7 A. If we did not finish on time. If we  
 8 didn't bring the bags back. If we didn't go to  
 9 work. I had to go to -- they make me work even  
 10 sick. Otherwise, they would fire me. We did  
 11 not have the company to pack the bags. For  
 12 everything, they try to do to fire you.  
 13 Q. How many times did you report to work  
 14 sick but continue to work?  
 15 A. A few times.  
 16 Q. How long ago?  
 17 When was the first time?  
 18 A. I don't remember.  
 19 Q. 2010?  
 20 A. 2010, 2011, 2012.  
 21 Q. Let me ask you this.  
 22 Was Syed working for the company when  
 23 you started?  
 24 A. Yes.  
 25 Q. You started after him?

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1 F. Hernandez  
 2 A. Yes.  
 3 Q. Were there any specific statements that  
 4 Syed made to you that you thought were  
 5 intimidating or threatening?  
 6 A. He always threaten me.  
 7 And I ask him why they reduce my salary,  
 8 and he was taking money for my check for any  
 9 reason or any mistake, and every time, I  
 10 complain about my rights as a citizen, as a  
 11 human being, as an employee too.  
 12 Q. When was the first time you complained  
 13 to Syed about your reduction in salary?  
 14 A. Since the situation occurred, I talk to  
 15 him.  
 16 Q. When was that? Was it 2010?  
 17 A. Since 2010.  
 18 Q. You had spoken briefly about you thought  
 19 there was an issue about the rate per bag you  
 20 were supposed to receive, \$4 versus \$3.  
 21 MR. MOSS: Objection to the  
 22 form.  
 23 You can answer.  
 24 Q. When did that issue first come up?  
 25 A. Since 2010, that was my problem with

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1 F. Hernandez  
 2 him. He didn't let me talk. He didn't let us  
 3 talk with the bigger bosses. Otherwise, we  
 4 would have problems.  
 5 Q. Would it be fair to say that you and  
 6 Syed do not get along?  
 7 MR. MOSS: Objection to the  
 8 form.  
 9 A. I did get along with him. I had nothing  
 10 personal with him (Spanish).  
 11 It wasn't fair what he was doing with me  
 12 and other employees too (English), but mostly,  
 13 for me. He told me my face that he pay \$4.  
 14 Then he was not paying to me \$4, he was not.  
 15 \$3 (Spanish).  
 16 Q. \$3 or \$4 per bag, that's what you're  
 17 referring to?  
 18 A. \$3.  
 19 Q. Per bag, that's what you're referring  
 20 to?  
 21 A. Yeah (English).  
 22 Q. Would it be fair to say you and Syed had  
 23 multiple conversations about the rate you  
 24 should have been paid?  
 25 A. Yes.

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1 F. Hernandez  
 2 He got upset, and he didn't speak to me  
 3 (Spanish). Reducing my routes the next day, or  
 4 here, another driver, take -- take half of this  
 5 route (English).  
 6 Q. This goes back to when you raised the  
 7 issue about the value of the bags, \$4 versus  
 8 \$3?  
 9 MR. MOSS: Objection to the  
 10 form.  
 11 You can answer.  
 12 I apologize for cutting you off.  
 13 A. When I first started, per bag and per  
 14 mile. The driver will drive the miles.  
 15 Q. As far back as 2010 really, when you  
 16 started, you and Syed have had an ongoing,  
 17 we'll call it a dispute, about the proper rate  
 18 you should be paid per bag?  
 19 MR. MOSS: Objection to the  
 20 form.  
 21 You can answer.  
 22 A. I never had any verbal or physical  
 23 dispute with him.  
 24 Q. A disagreement.  
 25 A. Yes, because he get upset (Spanish).

[21] (Pages 78 to 81)

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1 F. Hernandez  
 2 He was avoiding to talk to me (English).  
 3 Q. You said as far back as 2010 he changed  
 4 your schedule as well or gave somebody else one  
 5 of your routes?  
 6 A. Yeah (English).  
 7 Q. That's happened --  
 8 A. That's happened a lot (English).  
 9 Q. Since 2010, it's happened multiple  
 10 times?  
 11 A. Yes.  
 12 He didn't do it only with me, but he did  
 13 it with other drivers too, but he was picking  
 14 apart me. I don't know why (English).  
 15 Q. Again, this is from the start of your  
 16 employment that you guys have had this back and  
 17 forth about changing routes because of the  
 18 dispute of the bag rate and whether or not  
 19 you're fairly compensated?  
 20 MR. MOSS: Objection to the  
 21 form.  
 22 You can answer.  
 23 A. There's a dispute that all of the  
 24 drivers had with him because of the miles and  
 25 expenses.

[Page 83]

1 F. Hernandez  
 2 Q. If there was one route that you had that  
 3 you would call yours that was your general  
 4 route, what was that?  
 5 A. Whichever he wanted.  
 6 For example, Route R, when you grow, the  
 7 route grow. He gave that to me until he wasn't  
 8 upset anymore.  
 9 Q. When you had the R Route, New York R?  
 10 A. New York R Route was more than six  
 11 months. I don't know (English).  
 12 Q. There was no route you had that was  
 13 consistently the same route?  
 14 You never had one that was consistent  
 15 throughout your employment?  
 16 A. It varies many times. Also, not only  
 17 that route. He also send me all the routes.  
 18 Q. I'm going to go back for a second to  
 19 when you said you would come in at 4:00 or so  
 20 and you would do the packing of the bags.  
 21 What percentage of your bags that you  
 22 were taking out for delivery that day would you  
 23 pack on your own?  
 24 MR. MOSS: Objection to the form  
 25 and to the extent it calls for

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1 F. Hernandez  
 2 speculation.  
 3 A. I don't remember. I did to help the  
 4 company because they forced us to do it.  
 5 Q. Was there ever a time when you would  
 6 show up to work and all your bags would already  
 7 be packed and you would just load them into  
 8 your car?  
 9 A. Yes.  
 10 Q. How often?  
 11 A. Don't remember.  
 12 Q. Two times a week?  
 13 A. Two or three times.  
 14 Q. Those two or three times a week --  
 15 MR. MOSS: Objection.  
 16 He didn't say a week.  
 17 MR. MEYER: I asked him how many  
 18 times a week, and he said two or three.  
 19 A. Two or three days.  
 20 You said week (English)?  
 21 Q. In any given week.  
 22 You're saying two or three times in the  
 23 course of your employment that your bags were  
 24 packed?  
 25 A. A week. A week. I'm saying days in the

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1 F. Hernandez  
 2 week (English).  
 3 Q. Up to half the days you would work in  
 4 the week, two to three days, your bags would be  
 5 packed already waiting for you, sitting there?  
 6 A. Yes, but most of the time, it was  
 7 something with the manifest, you know, not  
 8 accurate.  
 9 The company has some issues with the --  
 10 he had issues with the program, or there was  
 11 something always -- or a meeting to attend  
 12 (English).  
 13 Q. If these bags were packed and they'd be  
 14 packed somewhere between 7:00 and 9:00, right,  
 15 you wouldn't do anything?  
 16 MR. MOSS: Objection.  
 17 That was asked and answered.  
 18 Q. If you didn't pack any of these bags on  
 19 these two or three days a week when you didn't  
 20 have to pack anything, what time would those  
 21 bags be ready?  
 22 A. I had to stay there. I couldn't leave.  
 23 Q. That's not my question.  
 24 The question is, on the days, the two or  
 25 three days a week, when you did not pack any of

[22] (Pages 82 to 85)

[Page 86]

1 F. Hernandez  
 2 the bags, what time would those bags be ready  
 3 for you?  
 4 A. After 5:30 or 6:00 in the afternoon.  
 5 Q. From 4:00 to 5:30 or 6:00, what would  
 6 you do?  
 7 MR. MOSS: Objection.  
 8 That was asked and answered  
 9 already.  
 10 MR. MEYER: Not between 4:00 and  
 11 5:30 or 6:00.  
 12 MR. MOSS: He can answer it  
 13 again.  
 14 MR. MEYER: When you did not  
 15 have to pack the bags, that's more  
 16 specific.  
 17 Q. When you did not have to pack the bags  
 18 and the bags were ready for you, did you still  
 19 get to work at 4:00?  
 20 A. Of course. That's when we went in the  
 21 old kitchen.  
 22 Q. What do you mean by the "old kitchen"?  
 23 A. It was on Siegel Downtown, and they  
 24 transferred themselves to Baltic Street to a  
 25 bigger kitchen (English).

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1 F. Hernandez  
 2 Q. Let's go back to Siegel, the old  
 3 location.  
 4 Bags are packed for you. You don't have  
 5 to do any packing two to three days a week.  
 6 You're still coming in at 4:00. You're saying  
 7 the bags would be ready between 5:30 and 6:00.  
 8 What would you do between 4:00 and 5:30  
 9 or 6:00 at the old kitchen?  
 10 A. I had to take out my manifest, check out  
 11 the food in order.  
 12 So then they send us over to the office.  
 13 They send us to look for a key for some of the  
 14 clients in Manhattan.  
 15 Q. A key for what?  
 16 A. To get into the building or the house.  
 17 Q. Where you were making a delivery?  
 18 A. In Manhattan. Wherever they send me.  
 19 Wherever the route was.  
 20 Q. The key would be to the location for  
 21 wherever you're making the delivery, wherever  
 22 it may be?  
 23 A. Yes, so we wouldn't bother the clients.  
 24 Q. If the bags were ready for you at 5:30  
 25 or 6:00, what time would you get on the road

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1 F. Hernandez  
 2 after you loaded up your car to start making  
 3 deliveries?  
 4 A. When everything was in order, the  
 5 manifest. Most of the time, it was not in  
 6 order, so you had to wait for a bag. They  
 7 don't have a specific time. Before 12:00.  
 8 Q. Some point before midnight you'd be on  
 9 the road?  
 10 A. Yeah (English).  
 11 Q. For eight hours, approximately eight  
 12 hours potentially, you would review the  
 13 manifests, fix any bags that had issues, and  
 14 load your car; is that correct?  
 15 A. I didn't get that (English).  
 16 Q. You said you'd hopefully be on the road  
 17 before midnight, correct?  
 18 A. Yes.  
 19 Q. You were getting in at 4:00, correct?  
 20 A. That was for only some time only.  
 21 Q. What times were you getting into work at  
 22 4:00?  
 23 A. More than eight months.  
 24 Q. Was that the first eight months you  
 25 worked there?

[Page 89]

1 F. Hernandez  
 2 A. I didn't get it (English).  
 3 Q. You said for about eight months you got  
 4 in at 4:00.  
 5 A. At 4:00 or maybe before (Spanish).  
 6 Because there was a meeting called by  
 7 the company, by Syed, report this time, you  
 8 know, we missing bags. It was always an issue  
 9 (English).  
 10 Q. When was this?  
 11 You said for an eight-month period you  
 12 would come in at 4:00.  
 13 Was it the beginning of your employment,  
 14 towards the end of your employment?  
 15 A. Beginning of my employment (English).  
 16 Q. After those four months were up --  
 17 And you started in April?  
 18 MR. MOSS: It was eight months,  
 19 not four.  
 20 MR. MEYER: I'm saying he  
 21 started in April.  
 22 Q. For about eight months, you came in  
 23 around 4:00?  
 24 A. 4:00, or earlier (English).  
 25 Q. That gets you almost into 2011.

[23] (Pages 86 to 89)



[Page 90]

1 F. Hernandez  
 2 A. Yeah.  
 3 Q. What time would you come in when 2011  
 4 came around?  
 5 A. Like at 5:00 or 6:00, no more than that.  
 6 Q. Somewhere between 5:00 and 6:00, is that  
 7 your answer?  
 8 A. He wanted to do a schedule. Until he  
 9 wanted to do a schedule for the company.  
 10 Q. That 4:00 starting time, was that at the  
 11 same time you were a substitute driver?  
 12 A. Of course.  
 13 Q. Connecticut was only a couple-week  
 14 period, but if you were in New Jersey or  
 15 Upstate, what time would you make your last  
 16 delivery?  
 17 A. It depends on the situation (Spanish).  
 18 Whether condition, police officers up there.  
 19 It was pulling over, you know, because it's an  
 20 unrecognized vehicle coming to this  
 21 neighborhood, this town. So it was a lot of  
 22 times that I got to wait for the clients to --  
 23 to open the door. So there's no specific time  
 24 (English).  
 25 Q. Before 5:00 in the morning?

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1 F. Hernandez  
 2 A. After 5:00.  
 3 Q. Wasn't it company policy that all  
 4 deliveries be made by 5:00?  
 5 A. Not necessarily.  
 6 Q. What was the latest you ever made a  
 7 delivery?  
 8 A. Until 8:00 a.m. It depend on the  
 9 circumstances.  
 10 Q. Do you recall when that 8:00 time was?  
 11 A. I don't remember (English).  
 12 Q. Was there any special circumstance?  
 13 Was it a holiday or --  
 14 A. No (English).  
 15 Q. -- weather related?  
 16 A. Weather related and other stuff  
 17 (English).  
 18 Q. You don't know when that was?  
 19 A. (Witness shakes head.)  
 20 Q. Would your handwritten notebook reflect  
 21 that?  
 22 A. I don't remember. I don't know.  
 23 It was a lot of information that I  
 24 didn't put down, like I said, from the  
 25 beginning of my term when I first started

[Page 92]

1 F. Hernandez  
 2 working for Syed (English).  
 3 Q. Did you keep that notebook from when you  
 4 started working, or was that --  
 5 A. No. That was later on when I see that  
 6 -- what was going on (English).  
 7 Q. Once you started keeping that notebook,  
 8 did you keep it consistently until your job  
 9 ended?  
 10 A. I missed weeks, and I have -- I missed,  
 11 you know, a lot of weeks too to put down, a  
 12 month (English).  
 13 Q. Why would you keep it for certain weeks  
 14 but not others?  
 15 A. I'm tired. It was times that I didn't  
 16 have the roster (English).  
 17 Q. What roster?  
 18 A. The manifest. I'm sorry (English).  
 19 Q. With the client names and addresses?  
 20 We're talking about the same thing?  
 21 Is that the manifest you're talking  
 22 about?  
 23 A. That's the manifest (English).  
 24 MR. MEYER: Subject to the  
 25 reservation of rights to reopen him, I'm

[Page 93]

1 F. Hernandez  
 2 done.  
 3 MR. MOSS: I have no questions.  
 4 MR. MEYER: Thank you.  
 5 (Time Noted: 12:42 p.m.)  
 6  
 7  
 8 FERNANDO HERNANDEZ  
 9  
 10 Subscribed and sworn to before me  
 11 this \_\_\_\_ day of \_\_\_\_\_, 2013.  
 12  
 13 Notary Public

[24] (Pages 90 to 93)

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1

2 C E R T I F I C A T E

3

4 I, MELISSA KAHANE, hereby certify that

5 the Examination Before Trial of

6 FERNANDO HERNANDEZ was held before me on the

7 17th day of September, 2013; that said witness

8 was duly sworn before the commencement of his

9 testimony; that the testimony was taken

10 stenographically by myself and then transcribed

11 by myself; that the party was represented by

12 counsel as appears herein;

13 That the within transcript is a true

14 record of the Examination Before Trial of said

15 witness;

16 That I am not connected by blood or

17 marriage with any of the parties; that I am not

18 interested directly or indirectly in the

19 outcome of this matter; that I am not in the

20 employ of any of the counsel.

21 IN WITNESS WHEREOF, I have hereunto set

22 my hand this 17th day of September, 2013.

23

24

25 MELISSA KAHANE

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